THE RECORD
OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

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Association Activities

As THIS issue of THE RECORD goes to press the final arguments in the national moot court competition, sponsored by the Committee on Junior Bar Activities, of which Alfred P. O'Hara is Chairman, are being held at the House of the Association. The teams from twelve law schools, which were selected as the winners in the regional competitions participated in by over forty law schools, are contesting for possession of the Samuel Seabury Award.

Winners in the regional contests were: Albany Law School, Chicago-Kent College of Law, Georgetown University Law Department, Northeastern University School of Law, Notre Dame College of Law, Temple University School of Law, The University of Kansas School of Law, University of Kentucky College of Law, University of Oklahoma School of Law, and the University of Virginia Department of Law. Yale Law School, winner in last year's competition, is the only school whose team did not participate in a regional contest. The Yale team came direct to the finals to defend its position as the winner of the 1949 competition.

Judges for the final arguments were Justice Robert H. Jackson

of the Supreme Court of the United States, Chief Judge John T. Loughran of the New York Court of Appeals, Chief Judge John Biggs, Jr. of the Court of Appeals for the Third Circuit, Judge Harold R. Medina, Sir Frank Soskice, Solicitor General of England, and Whitney North Seymour.

Judges in the semi-final round were Justice Charles D. Breitel, Justice Felix Benvenga, Harrison Tweed, Judge Edward Weinfeld, Justice Henry Clay Greenberg and Bethuel M. Webster. Judges in the preliminary rounds included J. Edward Lumbard, Jr., John McKim Minton, Jr., Lloyd Paul Stryker, Chauncey B. Garver, Chester B. McLaughlin, Keith Lorenz, Frederick v. P. Bryan, S. Hazard Gillespie, Jr., Sinclair Hatch, Edward W. Bourne, Norris Darrell, Frederick P. Haas, Herman Berniker, Frederick F. Greenman, John G. Jackson, Jr., William Dean Embree, Francis Harding Horan, Allen T. Klots, Horace S. Manges, Samuel I. Rosenman, George A. Spiegelberg, James E. Nickerson, Maurice E. McLoughlin, Joseph A. Sarafite, John F. X. Finn, and Milton P. Kupfer.

All teams in both the regional and final competitions have argued the case of *John Fayerweather vs. Henry Wetmore and Rain Control, Inc.*, a case involving questions resulting from damages caused by artificial rainmaking.

At the Stated Meeting on December 12 the Committee on Law Reform, William B. Herlands, Chairman, will present a report on loyalty oaths for lawyers. The report results from recent action taken by the American Bar Association, urging that State Legislatures require such additional oaths from the profession. The report recommends that The Association of the Bar oppose the requirement for these oaths.

There will also be presented a report by the Special Committee on Improvement of the Divorce Laws, Richard H. Wels, Chairman, calling for the adoption in New York of the Uniform Divorce Recognition Act. An interim report will be received

from the Special Committee on the Federal Courts, Edwin A. Falk, Chairman.

At its November meeting the committee on Municipal Affairs, Ernest Angell, Chairman, had as the guest of the Committee Dr. Sterling D. Spero, Professor of Government, Division of Training and Public Service, New York University, and author of "Government as Employer."

The Committee recently opposed before the Board of Estimate bills which would change the 1940 actuarial basis of the City's police and firemen pension funds.

The 1950 New York State Legislative Annual, edited and published by the New York Legislative Service, Inc., is now available. This volume contains memoranda on the new session laws, articles by departmental counsel and other groups.

The committee on Taxation, John P. Ohl, Chairman, has issued a report on problems involved in an excess profits tax.

At its organization meeting the Committee on Legal Aid, of which Willis L. M. Reese is the Chairman, had as its guest J. Howard Rossbach, Attorney-in-Chief of the Legal Aid Society. Mr. Rossbach reviewed the work of the Society, pointing out that 34,000 civil cases and 10,000 criminal cases are handled each year by the Society.

The Committee considered a number of topics, including the possibility of permitting third-year law students to practice in certain courts on behalf of the Legal Aid Society, the English Legal Aid and Advice Scheme, the assignment of attorneys to indigent defendants in criminal courts, particularly in the Fed-

eral District Courts for the Southern and Eastern Districts, and proceedings *In Forma Pauperis,* with particular reference to the appropriate use of such proceedings.

IN RECENT broadcasts of the "On Trial" program, which is carried on the television and radio network of the American Broadcasting Company, in collaboration with the Association, the following topics have been discussed: World Federation, the Communist Control Act, Price Control, and Our Foreign Policy.

Judges on these programs were Charles S. Colden, Irving Ben Cooper, Jacob Grumet and Harold M. Kennedy. Witnesses were Admiral Harley Cope, Cord Meyer, Jr., Arthur Garfield Hays, Leo Wolman, Emil Rieve, Senator Brian McMahon and Congressman Frederic R. Coudert, Jr.

DURING the coming year the Committee on Labor and Social Security Legislation, Herbert W. Haldenstein, Chairman, will study and report on the following subjects: the objectives of picketing and the use of injunction in labor suits, a study of the clarification of the power of state agencies to act with respect to labor disputes involving interstate commerce, a study of revision of the State and Federal Statutes governing arbitration, and the improvement of the standards and methods of private arbitration of labor disputes.

THE LEGAL Referral Service, under the supervision of a joint committee of The Association of the Bar and the New York County Lawyers Association, welcomes applications from members of the Bar, who practice in the City of New York to serve on the panel of lawyers. The purpose of the Legal Referral Service is to provide a method whereby a person having some means to pay and seeking legal advice for a moderate fee may be referred to a

competent and reliable lawyer willing to render such service. This service has been in operation since 1946 and over 6,000 matters have been referred. Experience indicates that more than one-half of these matters have been disposed of on the first consultation for which members of the panel agree to charge $5.00. Particularly needed are attorneys familiar with and willing to accept landlord and tenant matters (residential) with emphasis on emergency rent laws, civil service, domestic relations, sales (retail), representation in Magistrate's Court. It should be emphasized that members of the public using the service are persons of moderate means but able to pay a modest fee and therefore not ordinarily eligible for legal aid.

Further particulars and application forms may be obtained by communicating with the office of the Legal Referral Service, 42 West 44th Street.

THE COMMITTEE on Art, Samuel A. Berger, Chairman, is making plans for the annual exhibition of paintings and sculpture by members. The Committee also has under consideration the possibility of two other shows. One of these would be a photographic show and the second possibility is an exhibition of works of art relating to the law, which are owned by members of the Association.

ATTENTION is directed to the bibliography published in this number of THE RECORD. It was prepared by the Librarian in connection with the inter-law school moot court competition sponsored by the Committee on Junior Bar Activities, and will be supplied to the law students participating in that competition.

JOSEPH W. LANDES, Chairman of the Committee on Arbitration, has announced the organization of the following subcommittees which will carry on the work of the Committee during the coming

year: Labor Arbitration, Arbitration Demonstration, Legislation, and Commercial Arbitration. The Committee still has under advisement the possibility of an educational program in cooperation with the Committee on Post-Admission Legal Education.

ON NOVEMBER 28 the Special Committee on Improvement of the Divorce Laws sponsored at the House of the Association a public forum, "Our Divorce Courts." Speakers were Judge Paul W. Alexander of Toledo, Ohio, who is Chairman of a Special Committee of the American Bar Association on Divorce and Marriage Laws; Supreme Court Justice Henry Clay Greenberg, Norman Thomas, former Socialist candidate for the Presidency, and Janet Hill Gordon, member of the Legislature of the State of New York.

Preceding the forum the Special Committee entertained at dinner members of the Citizens' Committee on Improvement of the Divorce Laws. At the dinner plans were discussed for the support by the Citizens' Committee of legislation which would establish a representative commission to study and recommend to the Legislature a comprehensive bill relating to the improvement of the divorce laws.

A TRANSCRIPTION of the final round in the national moot court competition will be broadcast over the radio network of NBC on Thursday evening, December 7, from 11:15 P.M. to midnight. The local outlet is WNBC.

The Calendar of the Association for December

(As of November 16, 1950)

December 1 — National Moot Court Competition. Auspices Committee on Junior Bar Activities

December 4 — Round Table Conference. Guests: The Hon. Edward A. Conger, The Hon. Samuel H. Kaufman, The Hon. Vincent L. Leibell and The Hon. Gregory F. Noonan, Judges of the United States District Court for the Southern District of New York. 8:15 P.M.
Dinner Meeting of Committee on Federal Legislation
"On Trial"—Television Program, WJZ-TV (Channel 7), 9:30 P.M.

December 5 — Dinner Meeting of Committee on Aeronautics
Dinner Meeting of Committee on Real Property Law

December 6 — Dinner Meeting of Executive Committee
Meeting of Joint Committee on Lawyers Placement Bureau
Meeting of Section on Wills, Trusts and Estates

December 7 — Meeting of Committee on the City Court of the City of New York
Meeting of Committee on Entertainment
Dinner Meeting of Committee on Law Reform
Meeting of Section on Taxation

December 11 — Meeting of Section on Federal Administrative Controls
Dinner Meeting of Committee on Professional Ethics
"On Trial"—Television Program, WJZ-TV (Channel 7), 9:30 P.M.

December 12 — *Stated Meeting of Association and Buffet Supper—6:15 P.M.*
"On Trial"—Radio Program, WJZ (770), 10 P.M.

December 13	Dinner Meeting of Committee on Bankruptcy and Corporate Reorganizations
	Meeting of Section on Drafting of Legal Instruments
	Meeting of Committee on Improvement of the Divorce Laws
	Dinner Meeting of Committee on Insurance Law
	Meeting of Section on State and Federal Procedure
December 18	Dinner Meeting of Committee on Medical Jurisprudence
	"On Trial"—Television Program, WJZ-TV (Channel 7), 9:30 P.M.
December 19	"Antitrust—New Frontiers and New Perplexities." Address by Milton Handler, Esq., Professor of Law, Columbia University
	"On Trial"—Radio Program, WJZ (770), 10 P.M.
December 20	Meeting of Committee on Admissions
	Meeting of Committee on Foreign Law
	Dinner Meeting of Committee on Courts of Superior Jurisdiction
December 21	Meeting of Committee on Broadcasting
December 25	"On Trial"—Television Program, WJZ-TV (Channel 7), 9:30 P.M.
December 26	Meeting of Section on Trials and Appeals
	"On Trial"—Radio Program, WJZ (770), 10 P.M.
December 27	Meeting of Library Committee
	Meeting of Section on Corporations
December 28	Meeting of Section on Labor Law

The Trial of an Anti-Trust Case

By Wm. Dwight Whitney

The trial of an anti-trust case involves a conflict between common law conceptions of the trial of cases, on the one hand, and the modern technology of government and business, on the other hand. The traditional Anglo-American concept of a trial involves oral examination of witnesses (direct and cross) and contest over the admissibility of documents (one by one). How are procedural considerations of this sort, which are the daily fare of lawyers trained in our law schools and our law offices, to solve the problems of big business and bigger government?

This opening may seem to you too philosophical when you have perhaps anticipated some practical suggestions as to the technique of trial. I hope to make some of those suggestions before my discussion ends. But I ask you to be patient, for any practical suggestions will (I venture to assure you) be more understandable if the larger problem first be made clear. And in any event you will have to work out your problems case by case, for almost every anti-trust case is by definition different from every other, and I believe it will be of more assistance to you in working out those problems if you have grasped the fundamental conceptions that govern them all than if I were merely to describe to you some "tricks of the trade" which, useful in one case, might be harmful in another.

Editor's Note: Mr. Whitney, a former chairman of the Admissions Committee and member of the Executive Committee, attended Yale and Oxford universities. He was admitted to the bar of New York in 1925 and served as Special Assistant to the U. S. Attorney and Special Assistant to the U. S. Attorney-General. He has also been called to, and practiced at, the English Bar (Inner Temple). After other World War II service, he acted as liaison officer for Mr. Justice Jackson in Europe in preparation for the Nuremberg trials. The lecture published here was delivered before the Section on Trials and Appeals at the House of the Association.

I

SUBSTANTIVE LAW

Why do I say that almost every anti-trust case is by definition different from every other? I say it because the Supreme Court of the United States has said so again and again.[1] The high road of anti-trust history is strewn with the derelict decisions of the federal district courts and circuit courts of appeal which have ignored this teaching. Again and again the district courts and circuit courts of appeal have sought to deduce some rule of law from the Supreme Court decisions, only to be once more reminded that there is no rule in most of this field other than that each case is to be decided according to its individual facts and circumstances.

May I pause here to defend myself against the doubt which may be rising in your minds as to whether there are not exceptions to this apparently anarchic idea? There are. But if we are to deal in a short hour with a branch of the law which occupies literally tens of thousands of pages in the Federal Reports, and with types of trials which normally last for months and have been known to last for years, you will have to indulge me to the extent of appreciating that every principle, or rule, that I attempt to state must be subject to some exceptions.

Exceptions there are, for example, under the more precise terminology of the Robinson-Patman Act against price discrimination, or under §7 of the Clayton Act against acquisition of shares of stock in competitor corporations, or under a limited number of similar express enactments. To illustrate how confusing attempts to set up definite rules of law in the anti-trust field may be, however, it may suffice to mention, as to the first example, that the Robinson-Patman Act has run into head-on collision with the principles of the Sherman Act in the *Standard Oil*

[1] *Board of Trade of City of Chicago v. United States*, 246 U.S. 231, 238 (1918); *National Association of Window Glass Manufacturers v. United States*, 263 U.S. 403, 411 (1923); *Appalachian Coals, Inc. v. United States*, 288 U.S. 344, 360 (1933); *Sugar Institute, Inc. v. United States*, 297 U.S. 553, 600 (1936).

of Indiana case, which has so divided the Supreme Court that it has had to order a re-argument, and as to the second example, that §7 of the Clayton Act gave rise to a series of 5 to 4 decisions in the Supreme Court in respect of which no one today knows whether the Court as now constituted would follow the 5 or the 4.

All this is because the structure of the anti-trust laws is that there is one central generic provision of paramount importance, and that none of the specific provisions that have been attempted as amendments to or improvements upon that central generic provision have worked happily in practice. It was on that central generic provision that Chief Justice Hughes made the famous comment that

> "as a charter of freedom the (Sherman) Act has a generality and adaptability comparable to that found to be desirable in constitutional provisions."[2]

The central provision is §1 of the Sherman Act:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states or with foreign nations, is hereby declared to be illegal."

The one all-important phrase in that sentence is "restraint of trade or commerce." It is true that many battles have been fought over the words that precede that phrase, on the one hand, and over the words that follow it, on the other hand; but those two wars have been pretty well settled.

The first war was over the phrase

> "Every contract, combination in the form of trust or otherwise, or conspiracy";

and was as to whether that applied only to agreements. That has been settled with the decision that any sort of combination, even tacit (Gary dinners; "conscious parallelism"), is included.

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[2] *Appalachian Coals, Inc. v. United States*, 288 U.S. 344, 359.

The second war was over the phrase

"among the several states or with foreign nations."

That was a sector of the whole jurisdictional war as between states and nations over interstate and foreign commerce; and indeed a remarkably high proportion of the cases in that field arose under the Sherman Act. The subject is too big to be treated here, but it is common knowledge that in all but a very limited number of cases, the victory has been with the nation, so far at least as concerns the type of combination to which the anti-trust laws apply.

Although it remains possible, therefore, that you may have a case in which one side or the other may claim that there is no combination, or that there is no interstate commerce, the chances are so heavily against the success of the claim that it will not be worth while to discuss it further in this lecture. Of course, there may be other cases in which the problem may be as to who is in the combination (as to whether, for example, what is being complained of is true as to the defendants named, or perhaps of only some of them, or perhaps of a whole industry instead of the particular defendants), and there may be other cases in which a part of the alleged activities involve interstate commerce and a part do not. But those are obviously questions of fact for particular cases.

We have left only the phrase "restraint of trade or commerce." Within that phrase the words "trade or commerce" need not long detain us. I would only point out that they are very broad words and give the statute an enormous reach. Many of the cries of anguish from defendants over recent decisions of the Supreme Court can be explained by the fact that industry has not always realized that there is no trade that may be lawfully restrained. In the end every "deal," indeed every "negotiation," is by definition a "trade" between two people, and if it is in interstate commerce, it is within the contemplation of the Sherman Act. It helps you to appreciate this if you consider the common law history of the phrase "restraint of trade," for although the Courts have been

concerned with this subject at least since the time of Henry IV,[3] it was only with the very recent industrial development that the idea began to get around that this branch of the law dealt mostly with big business. It deals with all business; and of course all the old cases dealt with petty local transactions. True, the common law did not impose penalties, or award damages, or permit injunctions on this subject. It held only that contracts and combinations in restraint of trade were void. But as far as the substantive phrase "restraint of trade" is concerned, it is the same one that is involved in the Sherman Act.

I come finally to the one single all-important word "restraint." This is obviously a comparative word, changing its meaning with every context. It was in the *Standard Oil* and *Tobacco* cases in 1911[4] that the Supreme Court first fully grasped and grappled with this fact. As Mr. Justice Brandeis pointed out in the *Chicago Board of Trade* case,[5]

> "The legality of an agreement or regulation cannot be determined by so simple a test, as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition."

Accordingly, it had become literally necessary to set up the much misunderstood "rule of reason." The "rule of reason" is nothing more nor less than the test of the reasonable and prudent man (which has been the guide in most of the law of torts, of which, after all, the anti-trust laws in their civil aspect are but a statutory branch). What was decided, was that restraint of trade was not

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[3] Year Book Hen. IV. f. 47, pl. 21 (1410); and see Y.B. 2 Henry V fol. 5, pl. 26; cited by Taft, C.J., in *United States v. Addyston Pipe & Steel Co.* (C.C.A. 6) 85 Fed. 271, 280.

[4] 221 U.S. 1 and 106.

[5] *Board of Trade of City of Chicago v. United States*, 246 U.S. 231, 238.

like a trespass, or an assault and battery,—not an injury *per se*. And yet the conception was not original to the Supreme Court.

Again, we must recognize the exception. There has grown up in recent years an idea that certain acts are, as the phrase goes, *per se* unreasonable. I hope you will pardon my conceit if I digress to mention that I think that that phrase was first thrust into anti-trust thinking by me in the brief for the United States in the *Trenton Pottery* case in 1926.[6] I have lived to regret it. It is philosophically quite unsound. But you can put it in its place if you realize that it is simply a shorthand phrase for the statement that some actions are so obviously unreasonable that it must be almost impossible to defend them. A notable example is that where firms representing a dominating proportion of an industry—say of the order of 80%—combine to fix prices or to divide markets as among themselves or to allocate production as among themselves, it becomes for most practical purposes impossible to defend them against the charge that they are restraining the particular trade involved. Note particularly the concluding phrases of the charge to the jury that were approved by the Supreme Court in the Trenton Pottery case[7]:

> "The law is clear that an agreement on the part of the members of a combination controlling a substantial part of an industry, upon the prices which the members are to charge for their commodity, is in itself an undue and unreasonable restraint of trade and commerce."

Yet in the *Appalachian Coals case*[8] eight Justices (including not merely Chief Justice Hughes, who wrote the opinion, but also Justices Brandeis, Stone and Cardozo) held that even the use of an exclusive common selling agent by the dominating elements in an industry could be defended if the trade was really controlled by the party on the other side, in that case by a unified group of

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[6] Government brief at p. 13.

[7] *United States v. Trenton Potteries Company, et al.*, 273 U.S. 392, 396.

[8] 288 U.S. 344 (1933).

purchasers. And in the *Chicago Board of Trade* case a unanimously agreed-upon price-fixing scheme was upheld because it was to operate only part of the time, and under all the circumstances in the particular case was reasonable.

The Sherman Act adopted, beside this basic conception of tort law, the basic conceptions of criminal law. Many apparent mysteries in anti-trust law may be solved by recalling the procedural fact that the original Sherman Act was and is primarily a criminal statute. The alternative reliefs by injunction and triple damage were added. But they might not be availed of unless what the defendant has done amounts to a crime. The criminal requirement of intent thus came early into the cases. But in combination or conspiracy cases intent is difficult to prove. Accordingly, the rule developed in accordance with the classic statement by Mr. Justice Holmes in the Nash case[9]:

> "Only such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition, or unduly obstructing the course of trade."

This criminal aspect fits in with the phrases used to define the offense, which were verbs, not nouns—dynamic, not static, phrases,—specifically, whoever "restrains" and whoever "monopolizes or attempts to monopolize."

§2 of the Sherman Act adds little, if anything. It forbids every person, and of course every combination, to "monopolize, or attempt to monopolize." Few sections of the United States Statutes at Large have suffered more from the lawyer's trade weakness of paying more attention to Court opinions than to the statute itself. You will rarely hear anyone refer to this section as anything other than "the monopoly section." But it is not a monopoly section at all. The words used are verbs, not nouns. It is not monopoly that

[9] *Nash v. United States*, 229 U.S. 373, 376.

is rendered illegal by this section (although it may be illegal for other reasons). What is rendered illegal by this section is monopolizing or attempting to monopolize. But obviously if you are consciously monopolizing or attempting to monopolize (and if you are not doing so consciously, you are not commiting a crime), then you must by definition be restraining, for the concept of restraining is the greater and includes the concept of monopolizing, which is merely one method of restraining. Thus the habit of Congress in seeking to particularize under the anti-trust laws, began, not with the Clayton Act of 1914, but with §2 of the Sherman Act itself. But as with most of the subsequent efforts of the same character, it accomplished little, for it added little to §1.

II

ECONOMIC–POLITICAL–SOCIAL

We can now see in better focus the problem in the usual anti-trust case. It is to determine whether in connection with a particular identifiable segment of trade or commerce (which may range anywhere from one transaction between a partner and his firm, or between an employer and an employee, up to the structure of the largest industries in the country, such as the entire steel industry in the *United States Steel* case, or all the western railroads in the *Western Rate* case now pending in Nebraska) that segment is unreasonably restrained.

This ought obviously to be an economic, or indeed a political, or social, problem. It is a problem in the field which an earlier generation so aptly described as "political economy." Take, for example, the larger type of case,—now more characteristic of what we call the "anti-trust laws." One man may think that the steel industry cannot be healthy unless it is broken into small fragments. Another may think that it is sounder to have larger corporations so long as they do not actually dictate what the others should do. In the great *United States Steel* case[20] itself, after ten

[20] *United States v. U.S. Steel Corp.*, 251 U.S. 417 (1920).

years of intermittent activity in the courts and the building of a Record of many many volumes, the decision ultimately broke on these philosophies. Five judges were against the steel corporation; four were for it. But of the five judges, one (Mr. Justice McReynolds) could not sit because he had as Attorney General participated in the prosecution, and another (Mr. Justice Brandeis) could not sit because he had written articles condemnatory of the defendant corporation. Thus, because of judicial proprieties, the decision came out in favor of the minority, and was by 4 votes to 3 in favor of the corporation.

This illustrates one of the consequences of the policy of the Sherman Act in entrusting to lawyers and judges the essentially political, economic and social function of deciding when business men are acting reasonably and when they are not. It is useful to remind ourselves that this is a function entrusted to lawyers in practically no other country in the world. Even in England, where the concept of restraint of trade was developed as a branch of the common law, the courts since the date of the Sherman Act have made the opposite decision to that made in our courts as to the meaning of "restraint" when applied to an entire industry. The English courts have held that it is reasonable for an association of all the big corporations in one industry to impose their practices and terms upon the others, or upon their customers or suppliers, so long as the practices and terms are in themselves not unreasonable, and are not imposed for a malicious motive. The Supreme Court has of course held exactly the opposite, that is to say, that it is the aggregation of power that is unreasonable and therefore unlawful, and that it makes no difference how benevolently the power is exercised. The explanation may be that American courts were compelled to accept the task, because they had been directed so to do by the Sherman Act, and therefore had to construe the Sherman Act in such a way that they could enforce it in accordance with standards which they as judges were qualified to apply. They were not qualified as economists, and therefore could not pass upon the reasonableness of prices or terms. Thus in our

country we have developed what to the man from Europe appears to be the baffling problem of trying in a law court the question as to what is reasonable in a purely economic situation.

This brings us to the actual trial of the case; and as criminal cases are rare, I will, in view of the limited time available, concentrate on civil cases.

If the case were to be tried on the continent of Europe, the problem would be relatively easy. In most European countries, when a great complicated civil case is presented, the plaintiff files a large written brief, to which he attaches whatever exhibits he thinks proper, much after the fashion of our modern United States Court of Appeals briefs on appeal with portions of the record attached as appendices. It is simply taken for granted in these European cases that no one will seriously dispute the correctness of the documents thus presented as exhibits. The other side then answers, attaching its documents. Then the first party may reply; and so it goes. No one supposes that there will be a living witness to be examined or cross-examined. This came up in a very dramatic way at Nuremberg, where there was a case to be tried comparable to an anti-trust case, in that there were a group of alleged conspirators in respect of whom their conduct over a period of many years was to be reviewed by a group of judges. The English lawyers present expected to examine and cross-examine witnesses, and indeed were very efficient in doing so. The German defense lawyers had no proficiency or experience in examination or cross-examination and were barely able to function. The American lawyers held endless debates among themselves as to whether they should call living witnesses or whether they should rely upon the introduction of a large number of documents.

III

TRIAL TECHNIQUES

So with the anti-trust cases. You always have at the threshold the problem as to whether you are to have witnesses, and if you

are to have documents, how they are to be introduced and received in evidence.

It might be interesting to take a particular case and to follow its procedural history in some detail. The defendants were two of the largest corporations in the United States and a few individuals connected with them. The case involved a series of agreements and related letters and memoranda, whose scope was not merely national but world-wide. The judge was a Federal judge of extraordinary intellectual ability who mounted the bench doubly-equipped with an excellent record in law school, on the one hand, and a wide reading in what I have called the subject of political economy, on the other hand. But which was he to be, a lawyer or a political economist? That remained to be disclosed. The government was the plaintiff; and the government lawyer arose and offered his first document in evidence. The defense lawyers arose and objected to its introduction on various of the grounds that are covered by several of the volumes of Wigmore. The result was a discussion which ranged over the rules of evidence as well as over the substantive law of conspiracy generally, not to speak of the citation of anti-trust cases, which of course are plentifully available in those tens of thousands of pages to which I have earlier referred. This took the better part of the first morning. It is lucky that the government is rich, and that the defense corporations are big, or no one could afford to go on this way much longer. Yet in the afternoon a second document was offered, and the discussion recommenced in much the same way as before, although perhaps a trifle less sharp because of the exhaustion inherent in having fought one's way down and up again in the hopelessly inefficient Federal Court House elevators and in having overeaten the rather rich food in that little restaurant at the corner of Foley Square. You all know what happens to documentary trials during the first hour after lunch.

Well, this process went on for about three weeks. In each instance, the Judge, after giving due consideration to arguments about best evidence, authenticity and the like, and whether there

had been sufficient evidence to connect one alleged conspirator with another, concluded that the document should be admitted, subject to later connecting-up. At that point, one of the defense lawyers said something to this effect: "Your Honor, for three weeks we have been debating the admission of documents, and I observe that, although you have listened patiently and with attention to our arguments, you have invariably ruled against us. Might it be more convenient just to let the Government put in all of its documents, one at a time, and just to assume authenticity until the end of the trial, at which time the defendants would like to reserve the privilege of contesting it, and meanwhile to give to the defendants in respect to each document an opportunity to discuss it on the merits?"

This suggestion was accepted by the Court, and the following procedure was worked out: The Government put all the documents which it proposed into print, and the defendants checked the printing against the originals or copies in the hands of the Government. For each document, the Government attorneys made a little opening statement as to why they were submitting it, and the attorneys for the defendants each had an opportunity, if they wished, to reply. This purely argumentative form took the place, as it were, of examination and cross-examination. Frequently the Court asked questions or interjected comments. This continued for three months, during which time over 1400 documents were so considered. In addition, the Government and the defendants both called living witnesses, each of whom was cross-examined in the usual way. One of the defendants' witnesses was an expert economist, who described the general world-wide economic position in the trade in question. The final record contained 4399 printed pages of exhibits and 809 pages of testimony.

The Court then took the whole under consideration, and four months later filed a long opinion. Subsequently there were three days of hearings on the Government's proposal for a decree, concluding with a long night session in chambers. All parties were fully heard, and the decree entered.

Thereupon the Government appealed because the decree was not as strong as it wished. Defendants then cross-appealed to the effect that the decision on the merits should have been in their favor, or, alternatively, that the decree should stand as entered. While the case was pending before the Supreme Court, one of the defendants changed its mind for commercial reasons and sided with the Government as to one of the most important provisions of the decree. Eventually (actually, a year and four months after the decree) all sides were heard in the Supreme Court, but with time as usual being very limited for oral argument. The upshot was that the lower court was upheld in every particular and all appeals dismissed.

The Government's complaint had been filed in 1943. The trial began in December 1944, and the decree was entered in October 1945. The case was argued and decided in the Supreme Court in 1947.

I have described one trial and appeal thus at some length, partly to give you one practical example and partly because the procedure involved in the case has been followed, with minor variations, in a number of subsequent cases. The case illustrates how the conflict between our recognized methods of common law court procedure may be reconciled with the necessity for the Court to consider a wide subject-matter. By permitting an expression by each party of its views on the merits of each documentary exhibit as it was introduced, Judge Rifkind[11] was able closely to follow the significance of the evidence as it unfolded. Formal difficulties were subordinated to clarity and comprehensiveness of understanding, and thereby to the ends of Justice.

A variant of this system is illustrated by the Government case now pending in Massachusetts against the United Shoe Machinery Company. Judge Wyzanski, who has shown great ingenuity in dealing with unusual problems of this character, when confronted with the Government's statement that there would be

[11] The case was *United States v. National Lead Company, et al.*, 63 F. Supp. 513; 332 U.S. 319.

several thousand documents, ordered the Government to select from that number 300, saying that he could not possibly be expected to read and digest the larger number. If the Government could not make a *prima facie* case with their 300 best documents, they could hardly expect to make one at all; whereas if they made a strong case with the first 300 chosen, the Judge would, of course, allow them to add whatever they might consider necessary.

Typical of other questions that have arisen in the course of preparation of anti-trust cases are (1) whether the Court shall require the plaintiff to give a list of witnesses to the defendants in advance of trial, (2) whether there shall be a recess at the end of the plaintiff's case before commencement of the defendants' case, (3) whether there shall be evidence taken even after the end of the case for the purposes of the decree, and (4), a question peculiar to Government cases, whether the Government may be required to disclose documents in its possession to the defendants.

(1) Judges have differed as to whether the Government or other plaintiff should be required to give a list of witnesses to the defendant in advance. There is no particular need for a settled practice on this, and perhaps it is an illustration that each case is different and much lies within the Court's discretion.

(2) The split trial system—giving defendants some time to prepare and organize their defense after the Government is finished—is almost always desirable in modern cases, because the Government generally presents such a sweeping and indefinite complaint that it is truly impossible for the defendants to tell what defense to prepare until the case has been put into some sort of orderly shape during the presentation of the plaintiff's case. Thus in the case against the investment bankers known as the *Morgan* case, Judge Medina has directed, with the consent of the Government (I should add), that there shall be such a recess, and doubtless it will be of several months' duration, as he has also ordered that the defendants should serve upon the Government 60 days in advance of the recommencement of the trial a list identifying all the documents upon which the defendants propose to rely.

(3) Taking new evidence after the Opinion and before the decree is a new practice which I predict will grow rapidly. Indeed, it seems to me essential to the proper administration of the anti-trust laws. This is because there is invariably a considerable lapse of time between the closing of the record and the entry of the decree. Yet the decree is supposed to regulate the conduct of the business—perhaps of a whole industry—then and for the future. It is absurd to base such a decree on a stale record. The *Alkali* case is an interesting example. There is practically nothing in the *Alkali* record relating to the business subsequent to 1939; and yet the decree has not yet been entered. The case is a fundamental one in the field of international trade. Every schoolboy knows that there have been revolutionary changes in the conduct of international trade since 1939. Hitler was then the leading world figure, and the United States was dedicated to isolationism. Such great trading areas as Great Britain did not have any of those currency and trade restrictions which have grown out of the war and are distinctive of international trade at this time. It is obvious that whatever decree governs international trade in the 1950s cannot be based upon a record which was concerned with the 1920s and 1930s. It will be the task of counsel to offer such evidence and of the Courts to accept it.

Actually, this procedure may not be so long as many might fear, as the trial itself, and above all, the Opinion of the Court, will have served to sharpen and clarify the issues, and to have brought Court and counsel on both sides into an easy working relationship, with the consequence that the main problem in connection with the decree in many cases may be merely to bring the record down to date. There may, of course, be exceptions, as was indicated in the *National Lead* case when the Government sought divestiture of plants by the defendants in connection with the decree, but was refused because at the trial this had not been suggested and no evidence relating to the subject-matter of the plants had been considered. The case was a neat example, as each of the two large defendants had two large factories, and the Govern-

ment's proposal was to make them divest themselves of one each. This was a plausibly attractive suggestion from the Government's point of view, but the Courts rejected it as coming too late in a case which had been primarily concerned with patents.

(4) Another question which remains open is whether the Government must disclose its documents to the defendants. There is no suggestion in the Federal Rules of Civil Procedure that the Government is any different from any other litigant. But the Attorney General has claimed an executive privilege to determine which documents shall be disclosed and which withheld. In the *Cotton Valley Operators* case[12] in Louisiana the defendant oil companies moved for discovery of the FBI reports. The Attorney General at first refused entirely to produce the reports, but later offered to prepare and produce summaries. The Judge took the position that it was for the Court and not for the Executive to pass upon the question of privilege, thus necessarily deciding that privilege could not be asserted generally, but only for particular purposes, as, for example, to protect the name of an informer. As the Attorney General persisted in his refusal, the Court actually dismissed the case. The Government, of course, appealed to the Supreme Court, and the matter was disposed of there without opinion through affirmance by a divided court.

This last problem has very wide implications, stretching far beyond the anti-trust laws. What more basic question could arise in modern procedure than the question whether there is in this country an Executive privilege on the part of the Government to refuse disclosure of what is within its knowledge, while demanding disclosure from its opponent? This is dangerously reminiscent of the doctrines of totalitarian countries—that the Executive has a special position in trials. Of course, I do not suggest for one moment that so pleasant and liberal an individual as Attorney General McGrath is to be likened in any way to the prosecutors behind the Iron Curtain. The danger is that, precisely because we

[12] *United States v. Cotton Valley Operators Committee*, 339 U.S. 940 (1950); aff'g CCH Trade Cases 1948–49 par. 62479.

may not fully appreciate the significance for the future of the decisions that may be taken now, a precedent might be established that the Executive government is even in this country above the law in this respect. It is frightening to realize that this fundamental question, which has been barely debated since the time that Chief Justice Marshall sat in the proceedings preliminary to the trial of Aaron Burr (and that was a criminal case), should have been argued in the Supreme Court last year with little attention paid to the case by other than the counsel who happened in the particular case to represent the particular defendants, and to have been passed off by the Supreme Court by a split decision.

Pre-trial conferences are thus of vital importance in the practical management of anti-trust cases. The current case against 17 investment banking firms, sometimes known as the *Morgan* case, the trial of which is expected to start in November before Judge Medina in this District, has provided an excellent example of that. In a Memorandum Opinion filed on May 25 last,[12] Judge Medina reported that he had held 27 pre-trial hearings up to that time, at which some 15 motions of major import, and numerous other motions, but all relating strictly to procedural questions, had been argued and decided. Many depositions had been taken, and at one of the depositions, lasting several days, the Judge had actually presided, in order to get a feel of the case. In view of the length and complexity of the Government complaint, the Government had been ordered to submit extensive answers to interrogatories, and these had occupied a printed volume. The Government in turn addressed numerous demands for admissions to the defendants. At the Judge's earnest request, the defendants consented to one of the defense counsel acting as a sort of committee to clear all exchanges with the Government. Vast amounts of statistics have been compiled and stipulated between the parties in advance of trial. The Government printed 10,640 documents and submitted them for authentication by the defendants.

[12] *United States v. Morgan, et al,* 10 FRD 240.

Eventually, the Government selected 4,000 documents in respect of which, as required by the Court, it gave to the defendants 60 days' notice in advance of trial, of its intention to rely upon them.

But even these Government cases can be dwarfed by triple damage cases. The current high is undoubtedly the case of *Ferguson v. Ford and Dearborn,* in which three large law offices have been locked in interminable combat, one for the plaintiff, two for the respective defendants. Over 27,000 documents have already been considered. Photographed by the new microfilm process, each page representing one microfilm frame, there are already over 500,000 microfilm frames. 96 witnesses have been examined by deposition, and over 70,000 pages of stenographic testimony have been taken. In order to control some of the innumerable contests arising in connection with the depositions, it became necessary to appoint a Special Master to preside over the depositions. Even he could not preside over all of them, for at times as many as six depositions have been going on simultaneously. What will happen at the trial, remains to be seen.

It is obvious that we are struggling with problems that entirely outrun any reasonable stretch of the imagination of the draftsmen of the very simple Rules of Civil Procedure. Is there any way out of the chaos?

IV

SUGGESTIONS FOR REFORM

I am going to be bold enough to make some suggestions. They are suggestions which are equally appropriate for all large business cases. Just how large business cases can be described, so that they may have separate rules, is a difficult question. But it certainly seems that we must have some classification for large commercial litigation, and provide it with a separate calendar, and perhaps even with separate judges. To try to operate these vast affairs within the framework of the present Rules of Procedure is too absurd long to satisfy anyone other than the rich and the extravagant.

In England there is a separate commercial court with a separate commercial list of cases to be tried. Actually, it is not technically a separate court, but only one part or term of the regular Supreme Court, Kings Bench Division. Yet a great commercial case under English practice might well be called a petty contract case compared to the sort of case with which we are dealing tonight. Obviously, we should have some separate terms of court to protect the Federal Judges, if no one else, from the awful imposition of these recurrent megaliths. The road out may be suggested by some practical experiences in these cases to date.

The principal evil is in the modern deposition procedure. Whatever one may say of the merits of the idea that an examination before trial would simplify cases by educating both parties and encouraging settlements, the idea becomes laughable in these great cases.

Witnesses simply cannot be expected to remember just exactly what was said and done in regard to a long series of complex business transactions over a period of years. In some of the farcical examinations before trial in the current *Morgan* case the Government attorneys have been trying to ask men of over 70 years of age to describe the details of negotiations in the 1920s, and indeed earlier. Just try yourself to describe the details of the cases that you tried in the 1920s, let alone the details of the cases that you tried the year before last.

What an extraordinary procedure it is that we are now trying to make effective. It consists normally of gathering from 20 to 30 lawyers in a room, then calling in one poor layman, and then pillorying him day after day with whatever questions the ingenuity or ignorance of the lawyers before him can conjure up. In the *Morgan* case, for example, the complaint ranges pretty well over the whole field of American financing of industry since 1915. The Government has called elderly bankers and examined them about the details of transactions running through that period. Yet one must sympathize with the Government attorneys themselves. They have necessarily been subjected to a barrage of objection,

protest and criticism from the defense counsel, partly on the specific ground that the information could be obtained from the documentary record, and partly on the general ground that they were wasting time. The usual answer by the witness is: "I don't remember" or "I can't possibly remember," or (very frequently) "The record will show."

The last reply introduces a ray of light. By "The record will show," the harassed witness means "Why not look at the document, which was written at the time, and whose contents no one disputes as a practical business proposition, and therefore I will not dispute it?"

Experience dictates the practical suggestions:

First. In all cases, each side should be compelled to make a full disclosure to the other at the outset of all of its documents that are relevant and material to the issue, and that are not privileged. They can be spread out on tables, and the other side can come in and read them. Any fear that documents will be held back can be easily taken care of, for it soon becomes apparent if there is a break in the continuity of correspondence, for example. If a letter is missing, it is usually referred to in another letter. Only after each side has thoroughly read and studied the documents, should it be permitted to take up the time of laymen by examining them as witnesses.

Second. No witness should be examined, except with either a Judge or a Master present. As our Judges are overworked, there should be Masters appointed to preside over all such examinations. These Masters could also preside over any dispute as to disclosure of documents. In general, they could preside over the sorting out of the whole vast mass of evidence preparatory to trial.

Our modern rules, by authorizing examinations before trial at the discretion of counsel (with no Judge present), have overlooked the key fact that there would not be a contested proceeding at all, unless the parties had shown themselves unable to agree without the assistance of a third party,—whether Louis XI dispensing justice under a tree, or a modern Judge. The need of a

Judge is not confined to legal proceedings. Contests of any sort are apt to degenerate unless there be an umpire. Look at any 22 young men on a football field, and you will see not one but several officials,—all very active, and each necessary. So the essential element in judicial proceedings for hundreds of years has been the impartial umpire or referee, call him what you will,—we call him Judge,—who presides, and who controls the conflicting parties.

V

CONCLUSION

We are here to-night as professional men. The extraordinary and burdensome duty imposed upon our profession by the anti-trust laws, and by other regulatory legislation in this country, which submit great controversies to judicial procedure, presents us not merely with a duty but with a privilege. To be worthy of that privilege we should be able to devise forms of procedure that will satisfy the lay community that we are not wasting their time and taxes, or otherwise abusing their trust in us.

The present procedure in large commercial litigation has failed. Until it is reformed, your problem in each case will be to aid the overworked Judge in devising and working out means and methods of getting around procedural rules that have been written for petty private litigation. As members of the bar and of the great Bar Associations, I hope that we may do more, and that we may develop rules of general application. It is a purely practical problem, and so that I may close on a purely practical note, let me repeat the rules that I would suggest (with the proviso always that they are a group of interrelated suggestions, all to be adopted together):

(1) Set up a division for commercial cases to which the presiding or senior judge may assign cases in his discretion.

(2) Obtain from Congress legislation authorizing the appointment of full-time paid Masters in that division.

(3) In cases in that division, require full disclosure of all pos-

sibly material documents, but excluding privileged documents, by each party to all other parties at the outset of the case.

(4) Only thereafter conduct examinations before trial, and let these be presided over by the Masters, with full authority to cut down the scope of the examination.

Committee Report

COMMITTEE ON INSURANCE LAW

A REFERENCE GUIDE TO INSURANCE LAW

By A. Alan Lane

The role of the attorney in the field of insurance has grown in stature with the realization by the governments, both state and federal, of the need to protect the public. Today, almost every phase of insurance is regulated by statute. In most of the law schools, insurance law is relegated to a very minor position, and consequently, the practitioner needs to search for the equipment necessary to enable him to serve his client. The purpose of this article is to present and familiarize the practitioner with the books, pamphlets, services and other literature which can be used by him in the practice of insurance law.

The major publications can be classified into various classes and types:

I. Complete treatises and digests setting forth every phase of the insurance law and every important case.

II. Short texts on the law of insurance.

III. Short texts limited to certain specific aspects of the insurance field.

IV. Pamphlets, articles in law journals and addresses dealing generally with various phases of insurance law.

V. Annuals, Periodicals and Services.

I. TREATISES AND DIGESTS

Among the many treatises and digests on the law of insurance, most of which, unfortunately, are of ancient vintage, a few modern treatises stand out as being of great value to the practitioner.

1. *Insurance Law and Practice—with Forms,*[1] by Julian Alan Appleman. Since its original publication in 1941, the text has been kept current by the promulgation of annual supplements. The set, comprising a number of volumes, covering every phase of insurance, has been divided by the author into various major categories.

I. Personal Insurance—All insurances pertaining to policies upon the life or health of an individual.

II. Property Insurance—All insurances pertaining to loss or destruction of property, whether realty or personalty.

Editor's Note: Mr. Lane has prepared this article with the aid of the members of the Committee on Insurance Law, of which Committee Mr. Lane is a member.

[1] 28 v. pocket parts '41-date Vernon Law Book Co.

III. Casualty Insurance—All insurances covering the legal liability of the individual.

IV. Insurance Peculiar to Commercial Risks—Insurance of titles, strike insurance, credit insurance, bonds of various types, etc.

V. Questions Common to All Insurances—Agency, waiver and estoppel, premium payments, and taxation.

This perspicuous work is a classic treatise in the field of insurance law.

2. *Cyclopedia of Insurance Law*[2]—Couch. Published in 1929, a supplement was added in 1945. A comprehensive compilation of cases are cited in appropriate footnotes under a system by which they are arranged alphabetically according to the jurisdiction in which the case was decided. The supplement was published for the purpose of expanding the scope of the original text by adding recent developments and decisions in the field of insurance law. The supplement follows the format of the text except where the new law has necessitated the development of new sections. Therefore, the supplement is of little value without the original text. However, the combination of text and supplement furnishes ample source material for the practicing attorney.

3. *Briefs on the Law of Insurance*,[3] by Cooley. The book is topically arranged into succinct legal propositions footnoted by extensive citations. It was written in 1927, supplemented in 1932, and, unfortunately, has not been revised or supplemented since. The idea, from a practical viewpoint, would be of great value to the practitioner if the book were revised to keep pace with the current developments. The insurance law attorney is in need of a "modern Cooley's" revised and supplemented annually.

Many states have treatises devoted solely to their particular state law. This type of digest, being confined to the insurance law of the state, may be generically termed "jurisdictional digests." Illustrative of these are:

1. A Treatise on the Law of Insurance,[4] by Southey Francis Miles. (Maryland Law.)

2. *The Law of Insurance in Pennsylvania*,[5] by Abe Jacob Goldin. This work in two volumes, covers every phase of Pennsylvania insurance law with appropriate citations to support each proposition advanced.

3. *New York Insurance Law*,[6] by Baldwin. Appended to many of the sections of this comprehensive book, are comment notes designed to explain any changes in the prior law as made by the committee responsible for the drafting of the revisions. Included are parallel citations to the New York

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[2] 9 v. 3 v. supplement and pocket parts '29–'45 Lawyers Co-Op.

[3] 8 v. 2d. ed. '27, Vernon Law Book Co. Supplement prepared by the publisher's editorial staff. v. 8 supplementing v. 1–7 '32.

[4] 169 p. Hephron and Haydon, n.d.

[5] 2 v. '46 George T. Bisel Co.

[6] Annual supplement '39, Banks Law Publishing Co.

Supplement, Northeastern Reporter, Supreme Court Reporter, and the Lawyers' Edition of the United States Supreme Court. Included also are miscellaneous statutes and the rules and regulations promulgated thereunder. A supplement is published annually.

4. *New York Insurance Law*,[7] edited by Paul R. Taylor. The book contains annotations of recent decisions in the New York and United States Supreme Courts with references to other related New York Laws. Included therein are a copy of the standard New York Fire Insurance Policy, Article VI-A of the New York Banking Law, etc. A new Volume appears each year.

Any study of an insurance problem would be greatly enhanced by a careful perusal of the above-mentioned treatises. An insurance law library would be woefully inadequate without at least one such treatise.

II. SHORT TEXTS ON THE LAW OF INSURANCE

The number of short texts on the law of insurance available for general use is by no means limited. Undoubtedly, they were primarily written for use by students. However, in addition to their general nature, some may nonetheless be utilized as a starting point for undertaking a study of the major branches of insurance, e.g., fire, life, and casualty insurance. Typical of this group are:

1. *The Law of Insurance*,[8] by Cady. The book contains a broad coverage of the general principles essential to a proper comprehension of the more intricate phases of insurance law. Emphasis, however, must be placed on the fact that it is essentially rudimentary in nature and scope.

2. *Essentials of Insurance Law*,[9] by Patterson. The book is devoted to a discussion of such general principles of insurance law as are applicable to all fields, without undertaking an analysis of the various special insurances. Again, as in Cady's "The Law of Insurance," this book is primarily introductory in purpose.

3. *Handbook of the Law of Insurance*,[10] by Vance. The coverage of this book extends to a general examination of all branches of insurance. However, there is a somewhat more detailed analysis of such specific topics as the life insurance contract, the standard fire insurance policy, marine insurance, accident, and other special forms of insurance. The book has frequently been cited by the courts as authority for numerous propositions. It does not offer a ready guide to specific points of law, due to its general nature, and therefore is of limited practical value to the practitioner.

4. *Insurance, Its Theory and Practice in the United States*,[11] by Albert Henry Mowbray. A comprehensive and valuable work in insurance law.

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[7] Annually published '49, Williams Press, Inc.
[8] 3d. ed. 427 p. '34 Lawyers Co-Op.
[9] 501 p., '35 McGraw-Hill Book Co., Inc.
[10] 2d. ed. 1104 p. '30 West.
[11] 3d. ed., McGraw-Hill Book Co., Inc., N. Y. and London, '46.

A modern standard reference work, on the text level in the field of insurance law, akin to texts dealing with other branches of the law, is necessary for adequate research on specific problems.

III. SHORT TEXTS LIMITED TO SPECIFIC FIELDS

There are innumerable short texts which have been written on almost every minute phase of the vast field of insurance law. Unfortunately, most of these were aimed at the insurance broker, agent, producer, or the layman. The selection adaptable for use by lawyers is highly limited. The following outline may perhaps distinguish between those areas which are inadequate for legal purposes and those which are useful.

A. *Accident and Health Insurance.*

Because of the wide applicability of this aspect of insurance to the majority of people, attorney and layman alike, the subject has received great attention. The following books, though not of value from the legal point of view, may serve as an understanding of the practical atmosphere in which the applicable laws function.

1. *Personal Accident Insurance,*[12] by Blanchard. This book deals with the relations in the field between the insured and the company through the medium of brokers and agents. It is concerned with procedural dealings between these parties rather than the legal effects which result therefrom.
2. *Accident and Health Insurance,*[13] by Faulkner.
3. *Accident and Health Insurance,*[14] by Gordon.
4. *Theory and Practice of Accident and Health Insurance,*[15] by LaMont.

These last three books, as all the others of that type, are of little, if any, value to a practicing attorney. Undoubtedly, there is a strong need for legal treatises on the subject.

B. *Casualty and Surety Insurance.*

In this branch of insurance law, many adequate books are available for use by attorneys. In the automobile insurance field the following are outstanding:

1. *Automobile Liability Insurance,*[16] by Appleman. Based on the National Standard Policy Provisions, the work contains an exhaustive survey of the details of automobile liability insurance. Legal propositions are amply supported by extensive citations encompassing decisions from almost every state. The decisions are analyzed and critically appraised in the light of the body of the law in its entirety.

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[12] 2d. ed. 186 p. 10s 6d '47 Stone and Cox.
[13] 366 p. '40 McGraw-Hill.
[14] 10 p. Free Insurance Econ. Soc. of Am.
[15] 235 p. '41 Spectator.
[16] 591 p. '38 Callaghan.

2. *Automobile Liability Insurance Law*,[17] by Turner.
3. *Cyclopedia of Automobile Law and Practice*,[18] by Blashfield.
4. *Law of Automobiles*,[19] by Berry (with key word index).
5. *Encyclopedia of Automobile Law*,[20] by Huddy.

These last four books are written in encyclopedia form with looseleaf supplements for current use.

6. *Trial of Automobile Accident Cases*,[21] by Schwartz. Here the discussion is devoted to the actual trial practice itself. The material is replete with rules of evidence to sustain the propositions advanced for the guidance of the trial attorney.

7. *Automobile Trials*,[22] by Clevenger. This book is similar to the preceding one with the additional advantage of cumulative looseleaf supplements.

8. *An Automobile Accident Suit*,[23] by Anderson. The book revolves about the procedure necessary to the undertaking of an automobile accident suit from its inception to the completion of the trial. In reading the book caution should be exercised to see that the practice outlined therein is in conformity with the law of the particular jurisdiction in which the lawyer will try his own case. The unique plan of this book evokes the suggestion that books of this type should be written to meet the demands of lawyers in each state, rather than be limited to a general discussion with no emphasis on the law of any particular jurisdiction.

9. *Insurance Policy Annotations*[24] published by the Insurance Law section of the American Bar Association. The book, containing supplements, is an invaluable guide for lawyers researching problems of automobile and fire policy insurance. In addition to the numerous decisions which are indexed according to the corresponding policy provisions, the book contains copies of the Automobile Liability Policy, Fire Policy, and an index of section papers.

10. *Statutes Affecting Liability Insurance*,[25] published by the Association of Casualty and Surety Companies. This excellent work is a new digest of State statutes relating to negligence actions and liability insurance coverage. It is an extremely useful manual to the insurance law practitioner, as it gives the law of each of the states as to the following subjects:

a. Liability to guests.
b. Service of process on non-resident motorists.
c. Vicarious liability.

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[17] '34 McClelland.
[18] 19 v. pocket parts '35—date Vernon Law Book Co.
[19] 20 v. pocket parts '34—date.
[20] 10 v. pocket parts '36—date.
[21] 1928 (later ed.) Matthew Bender & Co.
[22] Supplements '35—date.
[23] '34 Bancroft-Whitney Co.
[24] '41 Section of Ins. Law, American Bar Assoc.
[25] 4th ed. '49 New York 7, New York.

d. Policy requirements and insurer's liability.
e. Lien for medical treatment.
f. Survival of actions.
g. Actions for wrongful death.
h. Settlement of tort claims and actions.
i. Venue of tort actions.
j. Contribution among joint tortfeasors.
k. Contributory and comparative negligence.
l. Liability for operation of aircraft.

In the field of aviation insurance there are numerous books concerning the broad field of aviation law in general, which, unfortunately, devote only a small portion thereof to the specific questions applicable to the insurance aspects of aviation.

1. *Aviation Accident Law*,[26] by Rhyne. Only a single chapter of the entire volume is devoted to the relationship of insurance to aviation accidents. Yet the discussion is adequate in that it analyzes all the reported decisions of the courts affecting the subject. Personal injury and property damage claims are both included.

2. *Aviation Law*,[27] by Hotchkiss. Here again the portion of the treatise in which aviation insurance is reported is inadequately limited to six pages. It does, however, substantially cover other phases of aviation law.

3. *Air Law*,[28] by Shawcross and Beaumont. This comparatively new text has a more detailed section on aviation insurance than the two previously mentioned. Although it is an English publication, it is of value to the American attorney because throughout the text the authors refer to American Aviation Cases.

4. *The United States Aviation Reports*.[29] These annual reports contain all the aviation law decisions reported for the preceding annum. The cases, however, are not indexed topically and accordingly, it is difficult to find a decision dealing with insurance law as distinguished from other aspects of aviation law.

The increased use of insurance in the aviation industry in the last decade, points out the obvious necessity and demand for an adequate treatise on the law of aviation insurance. Such a book, dealing exclusively with aviation insurance, will find a welcome reception among insurance specialists.

In the field of suretyship there are a number of comprehensive texts which can be utilized by the practitioner. Two of the better works are:

1. *Suretyship*[30] by Stearns, edited by Nathan Feinsberger.

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[26] '47 Columbia Law Book Co.
[27] 2d. ed. '38 Baker, Voorhis and Co.
[28] '45, London, Eng., Butterworth & Co., Ltd.
[29] Annual, United States Aviation Reports Ins.
[30] 722 p. 4th ed. '34 W. H. Anderson Co.

2. *Suretyship*[31] by Simpson.

These texts discuss the fundamental principles underlying the law of suretyship, with exceptions to, explanations and applications of, the principles, together with the leading decisions announcing and supporting each, as well as the contrary contentions, doctrines and holdings. Both books were probably written primarily as texts for the student, but the practitioner can find them helpful on any problem involving the principles of suretyship.

3. *The Law of Suretyship and Guaranty*[32] by Hagendorn. This book, while basically similar in purport and content to the above books, may be distinguished from them in that it is limited exclusively to New York law, citing many leading New York cases. If revised to date, this book would be an invaluable guide to preliminary research.

It is significant to note that notwithstanding the fact that individual suretyship has become relatively unimportant in recent years with the tremendous growth of corporate sureties, no one has written a recent comprehensive work on corporate suretyship.

C. *Fire Insurance.*

In the field of fire insurance there are few specialized texts which are suitable to the insurance lawyer. In 1922 The Insurance Society of New York[33] published a series of lectures, *The Fire Insurance Contract,* of the various aspects of the fire insurance contract. The book was written by able lawyers in the field. The material is replete with citations illustrating interpretations of the clauses as well as indicating the jurisdictional conflicts which arose in the construction of the clauses.

The probable reason for the lack of current texts dealing with fire insurance specifically is that the subject is treated frequently in the broader treatises which cover insurance in all its forms. Undoubtedly, there is need for an annotated text on the subject.

D. *Life Insurance.*

There are innumerable books dealing with life insurance. Most do not fulfill the technical requirements which the practicing attorney will necessarily demand. Examples of this elementary type of book are:

1. *Life Insurance Contracts*[34] by Horne and Mansfield.
2. *Life Insurance*[35] by Magee.
3. *Life Insurance*[36] by MacLean.

There are more comprehensive books in the field, however, which the insurance lawyer may find of value.

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[31] 471 p. '50 West.
[32] 115 p. '38 Brooklyn, N. Y.
[33] '22 Insurance Society of N. Y.
[34] Rev. ed. 276 p. '48 Life Off. Management Assoc.
[35] 729 p. '39 Erwin.
[36] 259 p. '48 Life Off. Management Assoc.

4. *Beneficiary in Life Insurance,*[37] edited by McCahan. This book contains a series of lectures on the rights of a beneficiary under a life insurance policy. While primarily intended for use by the student, the lecture therein which deals with the rights of creditors of the beneficiary is excellent, in its limited scope, for the practitioner. This particular article is footnoted by extensive citations.

5. *An Analysis of Government Life Insurance*[38] by McGill. One of the few books on the subject of government Life Insurance, it includes an excellent section on the government policy and the pertinent statutory provisions.

6. *Conflict of Laws and Life Insurance Contracts,*[39] by Carnahan. This book presents the most important conflict of laws problems arising out of the construction of life insurance contracts and fraternal benefit certificates. Every phase of life insurance which is subject to a conflict of laws is discussed, with emphasis on the effects resulting therefrom. The decisions cited are taken from state and federal juridictions.

7. *Analysis of Group Life Insurance,*[40] by David Weinert Gregg, one of the most comprehensive books on group life insurance.

The unique nature of the life insurance contract requires more specialized treatment, in the form of annotated texts, than it has heretofore received.

E. *Marine Insurance.*

This subject has received its greatest coverage by English writers. Among the few American books, the following may be noted:

1. *The Law of American Admiralty*[41] by Benedict (6th Ed. by Knauth).
2. *The American Law of Marine Collision*[42] by Griffin.
3. *Marine Insurance; Its Principles and Practice*[43] by Winter.
4. *Handbook of Admiralty Law in the United States*[44] by Robinson.

These are general handbooks on American marine insurance law.

5. *American Maritime Cases.*[45] The active insurance lawyer will find this publication of great value in that it consists of annually published collations of the recent cases dealing with this specialized aspect of insurance law.

F. *Inland Marine Insurance.*

This field of insurance has become one of the most important branches of insurance law. Inland Marine policies are constantly before the courts for in-

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[37] 250 p. '48 Univ. of Pennsylvania Press.
[38] 290 p. '49 Univ. of Pennsylvania Press.
[39] 760 p. '42 Callaghan.
[40] '50, Univ. of Penn. Press.
[41] 6th ed. 7 v. New York & Albany, Matthew Bender & Co., Inc., N. Y., Baker, Voorhis & Co., 1940–41.
[42] Baltimore, American Maritime Cases, Inc. to be published in 1949. Text, 640 p., appendix, 250 p.
[43] 2d. ed. New York, McGraw-Hill Book Co., Inc., 1929, 494 p.
[44] St. Paul, West Publishing Co., 1939 1025 p.
[45] Baltimore, American Maritime Cases, Inc., 1923—date.

terpretation. This is understandable, not only because of the many risks covered, but because the policies have not been standardized. The following are the more important books in this field:

1. *Inland Marine Insurance,*[46] by Earl Appleman.
2. *Paths and By-Paths in Inland Marine Insurance,*[47] by Harold S. Daynard.
3. *Motor Carrier Loss and Damage Claims,*[48] by John McKnight Miller.
4. *Insurance; Its Theory and Practice in the United States,*[49] by Albert Henry Mowbray.

G. *The Relation of Medico-Legal Texts to Personal Injury Insurance.*

In every contract of insurance against personal injuries there is an inherent necessity for medico-legal reference books. The need of determining the pecuniary extent of the insured's injuries is obvious. The following books, strictly speaking, are not "insurance law books." Their function is rather to aid the attorney in development of a case involving personal injuries, not only as to the extent of the injuries, but also as to the future effects for purposes of estimating damages.

I. *Dictionaries.*

1. *The American Illustrated Medical Dictionary,*[50] by Dorland. This work is one of the best in its field. In addition to defining medical terms, it explains the historical aspect of those terms. It also includes anatomical tables, names and technical descriptions in brief of every operation. Furthermore, there is found herein short biographies of the men whose names have been given to diseases, structure, procedures, and so forth. Finally, assorted other valuable pieces of information are included.
2. *Practical Medical Dictionary,*[51] by Stedman. This work is of a similar nature and of comparable standing to the previous dictionary.

II. *Reference Works*

1. *Disability Evaluation—Principles of Treatment for Compensable Injuries,*[52] by McBride. It evaluates the difference between the injured party prior to the injury and the variation from normal after his recovery. The author discusses all the factors which must be taken into consideration in evaluating the injury. A great variety of specific injuries are discussed in detail.
2. *Trauma and Internal Disease,*[53] by Spicer. The author establishes a basis for medical and legal evaluation of the etiology, pathology, and clinical

[46] '34, McGraw-Hill Book Co., Inc., N. Y.
[47] '49, Insurance Advocate, N. Y.
[48] '48, Motor Transport Pub. Co., Washington.
[49] 3d ed., '46, McGraw-Hill Book Co., Inc., N. Y.
[50] 20th ed. '44 W. B. Saunders Co.
[51] '46 Williams & Wilkins Co.
[52] 4th ed. '48 J. B. Lippincott Co.
[53] '39 J. B. Lippincott Co.

processes following injury. The book contains a discussion of trauma and its relation to other injuries such as brain, chest, heart, etc., with illustrations.

3. *Medico-Legal Ophthalmology*,[54] by Snell. The book analyzes the compensation laws as they relate to visual disabilities and evaluates these disabilities. The purpose of the book is to exemplify the practical application of the visual efficiency computation to medico-legal practice.

4. *The Relation Between Injury and Disease*,[55] by Reed and Emerson.

5. *Accidental Injuries*,[56] by Kessler. This is one of the classic works in the field of the medico-legal aspects of workmen's compensation and public liability.

6. *Risk Appraisal*,[57] by Dingman.

Research has revealed that the aforementioned books adequately cover the subject matter.

H. *Workmen's Compensation.*

Among the many books on the specialized field of workmen's compensation law, the following should be of value to either the general practitioner or the specialist:

1. *Workmen's Compensation*,[58] by Schneider. This set embraces a number of volumes which are kept up to date by cumulative supplements and a monthly looseleaf service reporting the most recent developments in the field.

2. *Digest of Workmen's Compensation Laws in the United States and Territories*,[59] by Jones. In this single volume is found a very useful comparison of the statutes and decisions of the various states and territories.

3. *Subrogation Under Workmen's Compensation Acts*,[60] by Wright. This book analyzes the rights of employers and employees to prosecute claims against third parties who are legally liable under existing Workmen's Compensation Acts, for injury and death. Included is a summary of third party statutory provisions as well as a state by state comparison thereof.

I. *Miscellaneous*

Under this heading some of the other books which may be of value to the practitioner will be discussed.

1. *Group Insurance*,[61] by Crawford and Harlan. Most of the decisions in this field prior to 1936 are incorporated in this book. The treatise reveals the nature of group insurance and at the same time indicates the rules of law which have been developed or which are still in the process of development.

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[54] '40 C. V. Mosley Co.
[55] '38 Bobbs Merrill Co.
[56] 2d ed. '41 Lea & Febiger.
[57] 824 p. '46 Nat. Underwriter.
[58] 1941–'48, Thomas Law Book Co., St. Louis, Mo.
[59] 2d ed. 1913 Assoc. of Casualty & Surety Executives.
[60] '48 Central Book Co.
[61] 286 p. '36 Lawyers Co-Op.

The value of the book is lowered by the fact that it has not been kept up to date.

2. *Reinsurance,*[62] by Thompson. A preliminary treatise on some aspects of the law and practice of reinsurance and excess insurance. These special problems are thoroughly covered.

3. *A New Approach to Partnership Insurance,*[63] by White. The special problems of partnership insurance are expertly analyzed and discussed in this book.

These books, being of a highly specialized nature, are not, strictly speaking, necessary to the maintenance of an insurance law library. Within their limited framework, however, they are valuable.

IV. PAMPHLETS, ARTICLES IN LAW JOURNALS AND ADDRESSES

The materials available under this heading are usually too meager to be of much value. However, there are some good articles on certain specific features of insurance law which should be called to the attention of the reader. The following is by no means a complete and comprehensive list—such a task would be virtually impossible.

1. *The Right of the Defendant to Open and Close in Actions Brought Upon Insurance Contracts Where All the Defenses are Affirmative,*[64] by Fulton. This pamphlet discusses the procedure in the insurance field, on a topic of which there is very little literature. The author states rules as to pleading and practice which appear to be well established in most of the states and then cites insurance cases in which the question is involved. The discussion is further augmented by a critique of some of these decisions followed by an analysis of the conflicting interpretations placed upon them by the state and federal courts. The pamphlet concludes with a digest of the law in different states on the subject.

2. *Do False Statements in Applications as to Material Matters Render the Contract Void, Where the Falsity was known to the Applicant or Otherwise?*[65] by Fulton. The format of this pamphlet is similar to the above.

3. *An Inquiry into the States of the Service of Process upon Insurance Companies,*[66] by Hollander. As indicated by the title, the function of this pamphlet is to apprise the reader of the various potential problems which may, or do, arise in the service of process. Ample citations are provided for the propositions advanced.

4. *Accidental Means.*[67] An address by Bullitt before the Association of Life Insurance Counsel in New York. The author distinguishes between in-

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[62] 275 p. '42 Commerce Clearing House.
[63] 91 p. '45 Prentiss-Hall.
[64] '23 Chicago, Ill.
[65] '23 Chicago, Ill.
[66] Reprinted from U.S. Review, Phila. Issues of Oct. 6, Oct. 13, '34.
[67] '27 Assoc. of Life Insurance Counsel, N. Y.

surance against accidental death and insurance against death resulting from the accidental means. He cites many cases which are illustrative of the material and includes also a chart which analyzes the grounds on which the decisions are based.

5. *Testamentary Nature of Settlements of Life Insurance—Elected by the Beneficiary,*[68] by Horton. This well-written law review article contains a thorough discussion of the topic with many citations.

6. *Insurance Settlement Agreements and the Rule Against Perpetuities,*[69] by Epstein. This subject has been sparsely discussed in most insurance law books. This law review article, however, reviews the topic completely.

7. The following articles on life insurance are part of an annual compilation published by the Association of Life Insurance Counsel.[70] The latest publication produced some excellent papers.

(a) *Today's Anti-Trust Law* by Sonnett

(b) *When is the Knowledge of an Agent Imputed to a Life Insurance Company?*

(c) *The Life Insurance Policy in Probate Court,* by Booth.

The papers comprising this publication are all written by expert counsel who provide thoroughly citated material for use by the practitioner.

8. *Assignment of Life Insurance Policies as Collateral Security,*[71] by Robert C. Tait. This is a comprehensive pamphlet on a seldom discussed topic.

The above mentioned are, of course, a mere handful of the many good articles of this type. The author has attempted to show the functional value of good articles written on specific phases of insurance law. A comprehensive article, however, is the exception rather than the rule. It is suggested that this trend be reversed in the future.

V. ANNUALS, PERIODICALS AND SERVICES

Among the many annual publications, few are adapted to the needs of the practitioner. Some of the better ones are mentioned herein and briefly discussed.

1. *The Section of Insurance Law of the American Bar Association.*[72] Leading members of the bar and the insurance profession contribute diverse articles on current conditions relative to the legal and practical aspects of the field.

2. *The Association of Life Insurance Counsel Proceedings.*[73] This series of

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[68] Cornell Law Quarterly Vol. XVII No. 1 Dec. '31 Reprinted by Nat'l Life Insurance Co., Montpelier, Vermont.

[69] United States Law Review v. LXXIII Aug.–Sept. '39 n. 8–9.

[70] '49 Assoc. of Life Insurance Counsel.

[71] '39, The Graduate School of Bankers, Am. Bankers Asso.

[72] American Bar Assoc. Section on Insurance Law.

[73] Assoc. of Life Insurance Counsel, Rm. 351, One Madison Ave., N. Y. 10.

papers presented before the Association by experts in the insurance profession deals occasionally with certain problems in the field of fire, accident and other insurances. The bulk of the material, however, is directed toward a full and complete analysis of problems directly pertinent to life insurance.

3. *The American Life Convention,*[74] Legal Section. Here are presented a series of articles of the same nature as the preceding publication.

4. *The Insurance Bar*[75] is a series of books which commenced annual publication in 1926. The contents are:

a. An index of insurers operating in the United States.

b. A directory of insurance lawyers.

c. List of the various state insurance officials.

d. State officials in charge of registration and licensing of motor vehicles.

e. Selective digest of the law of insurance and related topics by states.

5. *Recommended Insurance Attorneys,*[76] by Best. This publication is similar in format and content to the preceding series of books.

6. *Insurance Counsel,*[77] by Hine. This is devoted solely to an approved list of insurance and transportation defense counsel, and various officials, e.g., state insurance officials.

7. *The Insurance Almanac*[78] is a general reference manual containing assorted factual information.

8. *Who's Who in Insurance.*[79]

There are numerous periodicals published on insurance. Most are of a general nature having little specific legal information. Some of the better ones are:

1. *Insurance Law Journal,*[80] a monthly publication featuring current thoughts on insurance law including the opinions of the attorney general, the activities of the courts, and recent decisions. This magazine conveys to the attorney much general information of the late happenings in the field.

2. *Insurance Decision,*[81] a monthly digest of opinions promulgated by federal and state appellate courts. It is similar to the Insurance Law Journal. An adequate law library requires subscription to at least one of these.

3. *The Journal.*[82] Most of the articles in this periodical are written by home

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[74] 230 N. Michigan Ave., Chicago, Ill.

[75] Bar List Publishing Co., Chicago, Ill.

[76] Best, Alfred M., Company, Inc., N. Y.

[77] Hine's Legal Directory Inc., Chicago, Ill.

[78] Underwriting Printing and Publishing Co.

[79] Underwriting Printing and Publishing Co.

[80] Monthly Commerce Clearing House.

[81] Monthly, $6, Rough Notes Co., Inc., Indianapolis.

[82] The American Society of Chartered Life Underwriters, 39–24 Walnut St., Philadelphia 4, Pa.

office counsel of life insurance companies, and by practising attorneys who specialize in taxation and estate planning. Also, each issue usually contains an article by either a well-known college professor or a life insurance company president.

4. *The Eastern Underwriter.*[83]
5. *The Insurance Field.*[84]
6. *Monthly by Best.*[85]

The last three mentioned contain occasional articles for lawyers which are not sufficiently adequate to satisfy the practitioner's needs for full coverage.

A good insurance periodical is of great importance to the attorney in order that he be kept apprized of the latest happenings in the field. The scarcity of proper specialized publications for insurance attorneys along this line points up the need for additional insurance magazines of a more specialized nature.

In regard to services, the following provide excellent source material:

1. *Commerce Clearing House.*[86] This loose-leaf publication provides the full text of all higher court decisions, state and federal, pertaining to all types of insurance not involving automobile and policy contracts. A case, table and topical index facilitates research.

2. *Digest of Insurance Cases.*[87] Within the broad framework of this publication are all decisions which in any manner affect insurance companies or their contracts, upon whatever plan or for whatever purpose their business may be conducted. The decisions reported cover all United States Courts, all appellate courts of the states, territories, the District of Columbia, and all English speaking countries. There is also reference to all annotations and leading articles in insurance law journals.

3. *Consolidated Laws of New York Annotated,*[88] by McKinney.

Subscription to any of these three publications is advisable, and through their medium the practitioner will thereby have access to all latest information on the broad subject of insurance law.

CONCLUSION

There is a pressing need for other publications in the insurance law field to replace the prevalent antiquated works. Too many of the better treatises and texts deal with English law and therefore are of little value to the American attorney. The American treatises and texts are in need of revision to meet the conditions of the current law. If thus revised they would provide the attorney with ample source material. There is also a need for more concise texts written for the practicing attorney rather than for the student. The wide

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[83] Weekly, $5 Eastern Underwriter Co., N. Y.
[84] Fire and Casualty Edition, B-weekly, $3 Insurance Field Co., Inc., Louisville, Ky.
[85] Monthly $4, Best, Alfred M., Inc., N. Y.
[86] 214 North Michigan Ave., Chicago, Ill.
[87] Rough Notes Co., Indianapolis.
[88] Rev. ed. Cum. Annual Supplements, Edward Thompson Co., N. Y.

fields of life and fire insurance in particular require many more specialized texts due to their unique structure. Possibly the format employed by the American Bar Association in publishing "Insurance Policy Annotations" could be adapted by them to meet the requirements of other branches of insurance law. There is need for more intensive coverage of the topics heretofore discussed in the various pamphlets and articles. The insurance lawyer would profit by having made available to him more good insurance annuals and periodicals especially adapted to his use.

The author has set forth herein some of the more desirable types of publications and the uses to which they may be employed. It is hoped that this article will prove to be of value to the practitioner in the insurance law field.

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THE FLEDGLINGS OF THE BAR

*"There are times in the career of every lawyer when, forgetting the niceties of the code, the arts of oratory, the technique of debating, unconscious of his robes or those of the judges, he turns to the judges, looking into their eyes as into the eyes of an equal, and speaks to them in the simple words a man uses to convince his fellow man of the truth. In these moments justice is reborn and he who pronounces the word feels a suppliant tremor in his voice like that in the prayers of the faithful."**

The recent Moot Court Competition, sponsored by the Association, has reminded us that another group trained in the fundamentals of the law is ready to fit itself into professional life. Once through Law School and the State Bar Examination, varied problems of orientation will inevitably arise to perplex the fledgling.

This checklist has been prepared in the belief that it will assist newly admitted members of the Bar in the conduct of their professional affairs. It is designed to provide an insight into the "how, what, and why" of an attorney's life—as a practitioner, as a member of a highly respected profession, and as a specially trained citizen contributing to the welfare of his society.

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